

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ANNA FRANK, as next friend pursuant to Fed.
R. Civ. P. 17(c) for infant Plaintiff Michael
Frank Jr.,

Plaintiff,

ORDER

14-cv-3019 (ADS)(ARL)

-against-

NEW YORK STATE DEPARTMENT OF
EDUCATION,

Defendant.

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APPEARANCES:

Civil Rights Clinic, Touro College Jacob D Fuchsberg Law Center

Attorneys for the Plaintiff

225 Eastview Drive

Central Islip, NY 11722

By: William M. Brooks, Esq., Of Counsel

NYS Attorney General's Office

Attorney for the Defendant

200 Old Country Road, Suite 460

Mineola, NY 11501

By: Toni E. Logue, Assistant Attorney General

SPATT, District Judge.

On May 14, 2014, Anna Frank (the "Plaintiff"), as next friend pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 17(c) for the Infant Plaintiff, Michael Frank, Jr. ("MF"), commenced this action for compensatory and punitive damages in connection with the decision of the Defendant Sachem School District ("Sachem") to remove MF from Grundy Elementary School and place him into the Little Flower Residential Treatment Center, a residential treatment center for emotionally disturbed children.

The complaint asserts a claim for compensatory and punitive damages against the New York State Department of Education (the "Defendant") under Title II of the Americans with

Disabilities Act (“ADA”), 42 U.S.C. § 12132, and the Individuals with Disabilities Act (“IDEA”), 20 U.S.C. § 1400, *et seq.* (Compl. at ¶ 88.)

Presently before the Court is the Defendant’s motion pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the complaint in its entirety. In this regard, the Defendant argues that (i) the Plaintiff lacks standing to assert a claim under the IDEA or the ADA; (ii) the Plaintiff’s claim is time-barred; (iii) the Plaintiff failed to exhaust her administrative remedies; and (iv) the Plaintiff fails to state a claim under either the IDEA or Title II of the ADA.

In a related case before this Court, Frank v. Sachem School District, No. 14-cv-067 (ADS)(ARL), the Plaintiff filed a complaint against Suffolk County and the Sachem School District (“Sachem”) arising from the exact same facts alleged in the instant case. In a February 5, 2015 Memorandum of Decision & Order, the Court dismissed the complaint in its entirety, including a cause of action against Sachem under the IDEA and Title II of the ADA for “instituting and participating in a funding scheme that provides economic incentives to school districts to segregate students with disabilities from the community.” With respect to this cause of action, the Court found that the Plaintiff’s IDEA claim failed as a matter of law because compensatory and punitive damages are not available under the IDEA. The Court further found that the allegations in the complaint regarding the “funding scheme” were vague and conclusory and did not give rise to an inference of intentional discrimination or deliberate indifference to MF’s rights under Title II of the ADA. Therefore, the Court granted Sachem’s motion to dismiss the Plaintiff’s ADA and IDEA claims.

In the instant case, the Plaintiff makes the exact same claims against the Defendant: the Plaintiff alleges that “[b]y instituting and participating in a funding scheme that provides economic incentives to school districts to segregate students with disabilities from the

community, [the] [D]efendant New York State Department of Education violated the integration mandate of the ADA and the IDEA.” (Id.)

The Plaintiff does not offer any reason why the result in this case should be any different than the result in Sachem, nor does the Court see any legal reason why the result should be different in the instant case. Therefore, for the reasons set forth in its February 5, 2015 Memorandum of Decision & Order in Sachem, the Court dismisses the Plaintiff’s complaint in its entirety. The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
February 9, 2015

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge